



State of Wisconsin
2003 - 2004 LEGISLATURE

This week!
(By 2/20)

LRB-3005/4

GMM:wlj:7

2
RMR

2003 BILL

Regen

Regen

1 AN ACT *to repeal* 48.977 (1); *to amend* 20.435 (7) (b), 46.10 (14) (a), 46.10 (14)
2 (b), 46.261 (1) (a), 46.261 (2) (a) 1., 46.261 (2) (a) 3., 46.261 (2) (a) 4., 46.261 (2)
3 (b), 46.495 (1) (d), 46.51 (4), 48.33 (4) (intro.), 48.345 (3) (c), 48.425 (1) (g), 48.427
4 (3m) (intro.), 48.427 (3p), 48.48 (17) (a) 3., 48.48 (17) (c) 4., 48.57 (1) (c), 48.57
5 (3) (a) 4., 48.57 (3m) (cm), 48.57 (3n) (am) 1., 48.57 (3n) (cm), 48.61 (3), 48.615
6 (1) (b), 48.977 (title), 48.977 (2) (intro.), 48.977 (2) (a), 48.977 (2) (b), 48.977 (2)
7 (c), 48.977 (2) (f), 48.977 (4) (a) 4., 48.977 (4) (a) 6., 48.977 (4) (b) 3., 48.977 (4)
8 (c) 1. g., 48.977 (4) (e), 48.977 (4) (g) 1., 48.977 (4) (g) 2., 48.977 (4) (h) 1., 48.977
9 (4) (h) 2., 49.155 (1m) (bm), 49.46 (1) (a) 5., 767.078 (1) (a) 2., 767.29 (1m) (c),
10 767.29 (2), 767.29 (4), 938.33 (4) (intro.), 938.57 (1) (c) and 938.57 (3) (a) 4.; and
11 *to create* 48.427 (3m) (c), 48.62 (5), 48.977 (3r) and 938.345 (4) of the statutes;
12 **relating to:** the appointment of a guardian for certain children in need of
13 protection or services, the payment of subsidized guardianship payments to a

BILL

1 guardian of a child who meets certain requirements, and making an ✓
2 appropriation.

~~a county department of human services or social services (county department) or in Milwaukee County, the Department of Health and Family Services (DHFS), to provide monthly subsidized guardianship payments to~~

Analysis by the Legislative Reference Bureau

Under current law, the court assigned to exercise jurisdiction under the Children's Code (juvenile court) may appoint a relative of a child as the guardian of the child if the juvenile court makes certain findings, including a finding that the child has been adjudged to be in need of protection or services and has been placed outside of his or her home pursuant to an order of the juvenile court for one year or longer. This bill permits any person, not just a relative, to be appointed as the guardian of a child who has been adjudged to be in need of protection or services. The bill also eliminates ^{the} that one-year waiting period and permits a child who has been adjudged to be in need of protection or services or whose parents' parental rights to the child have been terminated to be placed directly in the home of a guardian without first having been placed in another out-of-home placement.

Currently, a relative who is appointed as the guardian of a child in need of protection or services and who meets certain other requirements is eligible to receive long-term kinship care payments in the amount of \$215 per month for providing care and maintenance for the child. ~~This bill permits a person who is appointed as the guardian for a child in need of protection or services, who was the licensed foster parent or treatment foster parent of the child before that appointment, and who is a resident of Milwaukee County to receive monthly subsidized guardianship payments in an amount established by the Department of Health and Family Services (DHFS) based on the average amount of general purpose revenues expended per child in foster care in Milwaukee County in state fiscal year 2002-03 if the child is 12 years of age or over and has been placed outside of his or her home for 15 of the most recent 22 months, the parental rights of the child's parents have been terminated, or the juvenile court has found that reunification of the child with the child's parents is unlikely or contrary to the best interests of the child and that further reunification efforts are unlikely to be made or are contrary to the best interests of the child, or if the child does not meet any of those conditions, but DHFS has determined that providing subsidized guardianship payments to the guardian is in the best interests of the child and the juvenile court has confirmed that determination.~~

The bill also requires DHFS to request from the secretary of the federal Department of Health and Human Services a waiver of the requirements under Title IV-E of the federal Social Security Act that would authorize the state to receive federal foster care and adoption assistance reimbursement for the costs of providing care for a child who is in the care of a guardian who was licensed as the child's foster parent or treatment foster parent before the guardianship appointment and, if the waiver is approved, to provide monthly subsidized guardianship payments to the guardian according to the terms of the waiver.

~~and the juvenile court has found that appointment of a guardian is in the best interests of the child.~~

~~For Milwaukee County, the bill requires DHFS~~

(4)

(#)

Insert A-2m

~~Insert A-2~~

Insert A3

Law A-4

(1)

2

BILL

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.435 (7) (b) of the statutes is amended to read:

2 20.435 (7) (b) *Community aids.* The amounts in the schedule for human
3 services under s. 46.40, to fund services provided by resource centers under s. 46.283
4 (5), for services under the family care benefit under s. 46.284 (5), for reimbursement
5 to counties having a population of less than 500,000 for the cost of court attached
6 intake services under s. 48.06 (4), for shelter care under ss. 48.58 and 938.22, and for
7 foster care and, treatment foster care, and subsidized guardianship care under s. ss.
8 46.261 and 49.19 (10). Social services disbursements under s. 46.03 (20) (b) may be
9 made from this appropriation. Refunds received relating to payments made under
10 s. 46.03 (20) (b) for the provision of services for which moneys are appropriated under
11 this paragraph shall be returned to this appropriation. Notwithstanding ss. 20.001
12 (3) (a) and 20.002 (1), the department of health and family services may transfer
13 funds between fiscal years under this paragraph. The department shall deposit into
14 this appropriation funds it recovers under ss. 46.495 (2) (b) and 51.423 (15) from prior
15 year audit adjustments including those resulting from audits of services under s.
16 46.26, 1993 stats., or s. 46.27. Except for amounts authorized to be carried forward
17 under s. 46.45, all funds recovered under ss. 46.495 (2) (b) and 51.423 (15) and all
18 funds allocated under s. 46.40 and not spent or encumbered by December 31 of each
19 year shall lapse to the general fund on the succeeding January 1 unless carried
20 forward to the next calendar year by the joint committee on finance.

21 **SECTION 2.** 46.10 (14) (a) of the statutes is amended to read:

BILL

1 46.10 (14) (a) Except as provided in pars. (b) and (c), liability of a person
2 specified in sub. (2) or s. 46.03 (18) for inpatient care and maintenance of persons
3 under 18 years of age at community mental health centers, a county mental health
4 complex under s. 51.08, the centers for the developmentally disabled, the Mendota
5 Mental Health Institute, and the Winnebago Mental Health Institute or care and
6 maintenance of persons under 18 years of age in residential, nonmedical facilities
7 such as group homes, foster homes, treatment foster homes, ~~child caring institutions,~~
8 subsidized guardianship homes, residential care centers for children and youth, and
9 juvenile correctional institutions is determined in accordance with the cost-based
10 fee established under s. 46.03 (18). The department shall bill the liable person up
11 to any amount of liability not paid by an insurer under s. 632.89 (2) or (2m) or by other
12 3rd-party benefits, subject to rules that include formulas governing ability to pay
13 promulgated by the department under s. 46.03 (18). Any liability of the patient not
14 payable by any other person terminates when the patient reaches age 18, unless the
15 liable person has prevented payment by any act or omission.

16 **SECTION 3.** 46.10 (14) (b) of the statutes is amended to read:

17 46.10 (14) (b) Except as provided in par. (c) and subject to par. (cm), liability
18 of a parent specified in sub. (2) or s. 46.03 (18) for the care and maintenance of the
19 parent's minor child who has been placed by a court order under s. 48.355 or 48.357
20 in a residential, nonmedical facility such as a group home, foster home, treatment
21 foster home, subsidized guardianship home, or residential care center for children
22 and youth shall be determined by the court by using the percentage standard
23 established by the department of workforce development under s. 49.22 (9) and by
24 applying the percentage standard in the manner established by the department
25 under s. 46.247.

BILL

1 **SECTION 4.** 46.261 (1) (a) of the statutes is amended to read:

2 46.261 (1) (a) The child is living in a foster home or treatment foster home
3 licensed under s. 48.62 if a license is required under that section, in a foster home
4 or treatment foster home located within the boundaries of a federally recognized
5 American Indian reservation in this state and licensed by the tribal governing body
6 of the reservation, in a group home licensed under s. 48.625, in a subsidized
7 guardianship home under s. 48.62 (5), or in a residential care center for children and
8 youth licensed under s. 48.60, and has been placed in the foster home, treatment
9 foster home, group home, subsidized guardianship home, or center by a county
10 department under s. 46.215, 46.22, or 46.23, by the department, or by a federally
11 recognized American Indian tribal governing body in this state under an agreement
12 with a county department under s. 46.215, 46.22, or 46.23.

13 **SECTION 5.** 46.261 (2) (a) 1. of the statutes is amended to read:

14 46.261 (2) (a) 1. A nonrelative who cares for the dependent child in a foster
15 home or treatment foster home having a license under s. 48.62, in a foster home or
16 treatment foster home located within the boundaries of a federally recognized
17 American Indian reservation in this state and licensed by the tribal governing body
18 of the reservation or in a group home licensed under s. 48.625, a subsidized guardian
19 under s. 48.62 (5) who cares for the dependent child, or a minor custodial parent who
20 cares for the dependent child, regardless of the cause or prospective period of
21 dependency. The state shall reimburse counties pursuant to the procedure under s.
22 46.495 (2) and the percentage rate of participation set forth in s. 46.495 (1) (d) for aid
23 granted under this section except that if the child does not have legal settlement in
24 the granting county, state reimbursement shall be at 100%. The county department
25 under s. 46.215 or 46.22 or the department under s. 48.48 (17) shall determine the

BILL

1 legal settlement of the child. A child under one year of age shall be eligible for aid
2 under this subsection irrespective of any other residence requirement for eligibility
3 within this section.

4 **SECTION 6.** 46.261 (2) (a) 3. of the statutes is amended to read:

5 46.261 (2) (a) 3. A county or, in a county having a population of 500,000 or more,
6 the department, when the child is placed in a licensed foster home, treatment foster
7 home, group home, or residential care center for children and youth or in a subsidized
8 guardianship home by a licensed child welfare agency or by a federally recognized
9 American Indian tribal governing body in this state or by its designee, if the child is
10 in the legal custody of the county department under s. 46.215, 46.22, or 46.23 or the
11 department under s. 48.48 (17) or if the child was removed from the home of a
12 relative, as defined under s. 48.02 (15), as a result of a judicial determination that
13 continuance in the home of the relative would be contrary to the child's welfare for
14 any reason and the placement is made pursuant to an agreement with the county
15 department or the department.

16 **SECTION 7.** 46.261 (2) (a) 4. of the statutes is amended to read:

17 46.261 (2) (a) 4. A licensed foster home, treatment foster home, group home,
18 or residential care center for children and youth or a subsidized guardianship home
19 when the child is in the custody or guardianship of the state, when the child is a ward
20 of an American Indian tribal court in this state and the placement is made under an
21 agreement between the department and the tribal governing body, or when the child
22 was part of the state's direct service case load and was removed from the home of a
23 relative, as defined under s. 48.02 (15), as a result of a judicial determination that
24 continuance in the home of a relative would be contrary to the child's welfare for any
25 reason and the child is placed by the department.

BILL

1 **SECTION 8.** 46.261 (2) (b) of the statutes is amended to read:

2 46.261 (2) (b) Notwithstanding par. (a), aid under this section may not be
3 granted for placement of a child in a foster home or treatment foster home licensed
4 by a federally recognized American Indian tribal governing body, for placement of a
5 child in a foster home, treatment foster home, group home, subsidized guardianship
6 home, or residential care center for children and youth by a tribal governing body or
7 its designee, or for the placement of a child who is a ward of a tribal court if the tribal
8 governing body is receiving or is eligible to receive funds from the federal government
9 for that type of placement ~~or for placement of a child in a group home licensed under~~
10 ~~s. 48.625.~~

11 **SECTION 9.** 46.495 (1) (d) of the statutes is amended to read:

12 46.495 (1) (d) From the appropriations under s. 20.435 (3) (o) and (7) (b) and
13 (o), the department shall distribute the funding for social services, including funding
14 for foster care ~~or~~, treatment foster care, or subsidized guardianship care of a child on
15 whose behalf aid is received under s. 46.261, to county departments under ss. 46.215,
16 46.22, and 46.23 as provided under s. 46.40. County matching funds are required for
17 the distributions under s. 46.40 (2), (8), and (9) (b). Each county's required match for
18 the distributions under s. 46.40 (2) and (8) for a year equals 9.89% of the total of the
19 county's distributions under s. 46.40 (2) and (8) for that year for which matching
20 funds are required plus the amount the county was required by s. 46.26 (2) (c), 1985
21 stats., to spend for juvenile delinquency-related services from its distribution for
22 1987. Each county's required match for the distribution under s. 46.40 (9) (b) for a
23 year equals 9.89% of that county's amounts described in s. 46.40 (9) (a) (intro.) for
24 that year. Matching funds may be from county tax levies, federal and state revenue
25 sharing funds, or private donations to the county that meet the requirements

BILL

1 specified in s. 51.423 (5). Private donations may not exceed 25% of the total county
 2 match. If the county match is less than the amount required to generate the full
 3 amount of state and federal funds distributed for this period, the decrease in the
 4 amount of state and federal funds equals the difference between the required and the
 5 actual amount of county matching funds.

6 **SECTION 10.** 46.51 (4) of the statutes is amended to read:

7 46.51 (4) A county may use the funds distributed under this section to fund
 8 additional foster parents ~~and~~, treatment foster parents, and subsidized guardians
 9 to care for abused and neglected children and to fund additional staff positions to
 10 provide services related to child abuse and neglect and to unborn child abuse.

11 **SECTION 11.** 48.33 (4) (intro.) of the statutes is amended to read:

12 48.33 (4) OTHER OUT-OF-HOME PLACEMENTS. (intro.) A report recommending
 13 placement of an adult expectant mother outside of her home shall be in writing. A
 14 report recommending placement of a child in a foster home, treatment foster home,
 15 group home, or residential care center for children and youth ~~or~~, in the home of a
 16 relative other than a parent, or in the home of the child's guardian under s. 48.977
 17 (2) shall be in writing and shall include all of the following:

18 **SECTION 12.** 48.345 (3) (c) of the statutes is amended to read:

19 48.345 (3) (c) A foster home or treatment foster home licensed under s. 48.62
 20 ~~or~~, a group home licensed under s. 48.625, or in the home of the child's guardian under
 21 s. 48.977 (2).

22 **SECTION 13.** 48.425 (1) (g) of the statutes is amended to read:

23 48.425 (1) (g) If an agency designated under s. 48.427 (3m) (a) 1. to 4.
 24 determines that it is unlikely that the child will be adopted, or if adoption would not
 25 be in the best interests of the child, the report shall include a plan for placing the child

20 ✓
 Insert
 8-21
 21
 22

BILL

1 in a permanent family setting. The plan shall include a recommendation as to the
2 agency to be named guardian of the child or a recommendation that the person
3 appointed as the guardian of the child under s. 48.977 (2) continue to be the guardian
4 of the child or that a guardian be appointed for the child under s. 48.977 (2).

5 **SECTION 14.** 48.427 (3m) (intro.) of the statutes is amended to read:

6 48.427 (3m) (intro.) If the rights of both parents or of the only living parent are
7 terminated under sub. (3) and if a guardian has not been appointed under s. 48.977,
8 the court shall either do one of the following:

9 **SECTION 15.** 48.427 (3m) (c) of the statutes is created to read:

10 48.427 (3m) (c) Appoint a guardian under s. 48.977 and transfer guardianship
11 and custody of the child to the guardian.

12 **SECTION 16.** 48.427 (3p) of the statutes is amended to read:

13 48.427 (3p) If the rights of both parents or of the only living parent are
14 terminated under sub. (3) and if a guardian has been appointed under s. 48.977, the
15 court may enter one of the orders specified in sub. (3m) (a) or (b). If the court enters
16 an order under this subsection, the court shall terminate the guardianship under s.
17 48.977.

18 **SECTION 17.** 48.48 (17) (a) 3. of the statutes is amended to read:

19 48.48 (17) (a) 3. Provide appropriate protection and services for children and
20 the expectant mothers of unborn children in its care, including providing services for
21 those children and their families and for those expectant mothers in their own
22 homes, placing the children in licensed foster homes, treatment foster homes, or
23 group homes in this state or another state within a reasonable proximity to the
24 agency with legal custody, placing the children in the homes of the children's
25 guardians under s. 48.977 (2), or contracting for services for those children by

BILL

1 licensed child welfare agencies, except that the department may not purchase the
2 educational component of private day treatment programs unless the department,
3 the school board, as defined in s. 115.001 (7), and the state superintendent of public
4 instruction all determine that an appropriate public education program is not
5 available. Disputes between the department and the school district shall be resolved
6 by the state superintendent of public instruction.

7 **SECTION 18.** 48.48 (17) (c) 4. of the statutes is amended to read:

8 48.48 (17) (c) 4. Is living in a foster home, treatment foster home, group home,
9 or residential care center for children and youth or in the home of a subsidized
10 guardian under s. 48.62 (5).

11 **SECTION 19.** 48.57 (1) (c) of the statutes is amended to read:

12 48.57 (1) (c) To provide appropriate protection and services for children and the
13 expectant mothers of unborn children in its care, including providing services for
14 those children and their families and for those expectant mothers in their own
15 homes, placing those children in licensed foster homes, treatment foster homes, or
16 group homes in this state or another state within a reasonable proximity to the
17 agency with legal custody, placing those children in the homes of the children's
18 guardians under s. 48.977 (2), or contracting for services for those children by
19 licensed child welfare agencies, except that the county department may not purchase
20 the educational component of private day treatment programs unless the county
21 department, the school board, as defined in s. 115.001 (7), and the state
22 superintendent of public instruction all determine that an appropriate public
23 education program is not available. Disputes between the county department and
24 the school district shall be resolved by the state superintendent of public instruction.

25 **SECTION 20.** 48.57 (3) (a) 4. of the statutes is amended to read:

BILL

1 48.57 (3) (a) 4. Is living in a foster home, treatment foster home, group home,
2) or residential care center for children and youth ~~or if the child is a resident of a~~
3) ~~county that is included in a waiver described in s. 48.62 (5) (b).~~ is living in the home
4 of a subsidized guardian under s. 48.62 (5).

5 **SECTION 21.** 48.57 (3m) (cm) of the statutes is amended to read:

6 48.57 (3m) (cm) A kinship care relative who receives a payment under par. (am)
7 for providing care and maintenance for a child is not eligible to receive a payment
8 under sub. (3n) or s. 48.62 (4) or (5) for that child.

9 ~~**SECTION 22.** 48.57 (3n) (am) 1. of the statutes is amended to read:~~

10 ~~48.57 (3n) (am) 1. The long-term kinship care relative applies to the county~~
11 ~~department or department for payments under this subsection and provides proof~~
12 ~~that he or she has been appointed as the guardian of the child under s. 48.977 (2) and~~
13 ~~states that he or she was not licensed as the child's foster parent or treatment foster~~
14 ~~parent before the guardianship appointment.~~

15 **SECTION 23.** 48.57 (3n) (cm) of the statutes is amended to read:

16 48.57 (3n) (cm) A long-term kinship care relative who receives a payment
17 under par. (am) for providing care and maintenance for a child is not eligible to
18 receive a payment under sub. (3m) or s. 48.62 (4) or (5) for that child.

19 **SECTION 24.** 48.61 (3) of the statutes is amended to read:

20 48.61 (3) To provide appropriate care and training for children in its legal or
21 physical custody and, if licensed to do so, to place children in licensed foster homes,
22 licensed treatment foster homes, and licensed group homes and in the homes of the
23 children's guardians under s. 48.977 (2).

24 **SECTION 25.** 48.615 (1) (b) of the statutes is amended to read:

BILL

and who has entered into a subsidized guardianship agreement with the county department for department

1 48.615 (1) (b) Before the department may issue a license under s. 48.60 (1) to
2 a child welfare agency that places children in licensed foster homes, licensed
3 treatment foster homes, and licensed group homes and in the homes of the children's
4 guardians under s. 48.977 (2), the child welfare agency must pay to the department
5 a biennial fee of \$254.10.

a county department or in a county having a population of 500,000 or more, the department shall provide

6 **SECTION 26.** 48.62 (5) of the statutes is created to read:

7 48.62 (5) (a) Subject to par. (b), monthly subsidized guardianship payments
8 ~~shall be provided~~ ^{in the amount specified in par. (c)} to a guardian of a child under s. 48.977 (2) who was licensed as the
9 child's foster parent or treatment foster parent before the guardianship
10 appointment, and who is a resident of a county having a population of 500,000 or
11 more, according to a rate established by the department based on the average
12 amount of general purpose revenues expended for foster care per child in foster care
13 in that county in fiscal year 2002-03 if the child meets any of the following conditions:

14 1. The child ~~is 12 years of age or over and~~ ^{is} has been placed outside of his or her
15 home, as described in s. 48.365 (1) ^{STET comma} for 15 of the most recent 22 months, the parental
16 rights of both of the child's parents or of the child's only living parent have been
17 terminated, or the court has found under s. 48.977 (2) (f) that the agency primarily
18 responsible for providing services to the child under a court order has made
19 reasonable efforts to make it possible for the child to return to his or her home, while
20 assuring that the child's health and safety are the paramount concerns, but that
21 reunification of the child with the child's parent or parents is unlikely or contrary to
22 the best interests of the child and that further reunification efforts are unlikely to
23 be made or are contrary to the best interests of the child, or that any of the
24 circumstances specified in s. 48.355 (2d) (b) 1. to 5. apply

for a cumulative total period of one year or longer

and the court has found under s. 48.977 (4)(h) that appointment of a guardian for the child is in the best interests of the child

BILL

appointing a guardian for the child under s. 48.977 (2) and

SECTION 26

county department or

1 2. The child does not meet the conditions specified in subd. 1., but the
2 department has determined, and the court has confirmed under s. 48.977 (3r), that
3 providing monthly subsidized guardianship payments to the guardian ^{also} in the best
4 interests of the child.

5 (b) The department shall request from the secretary of the federal department
6 of health and human services a waiver of the requirements under 42 USC 670 to 679a
7 that would authorize the state to receive federal foster care and adoption assistance
8 reimbursement under 42 USC 670 to 679a for the costs of providing care for a child
9 who is in the care of a guardian who was licensed as the child's foster parent or
10 treatment foster parent before the guardianship appointment. If the waiver is

11 approved, the rate established under par. (a) shall not apply, and monthly subsidized
12 guardianship payments under par. (a) shall be provided to the guardian according
13 to the terms of the waiver. and who has entered into a subsidized guardianship
14 agreement with the county department or department

Insert
13-13

SECTION 27. 48.977 (title) of the statutes is amended to read:

15 **48.977 (title) Appointment of relatives as guardians for certain**
16 **children in need of protection or services.**

17 **SECTION 28.** 48.977 (1) of the statutes is repealed.

18 **SECTION 29.** 48.977 (2) (intro.) of the statutes is amended to read:

19 **48.977 (2) TYPE OF GUARDIANSHIP.** (intro.) This section may be used for the
20 appointment of a relative of a child as a guardian of the person for the a child if the
21 court finds all of the following:

22 **SECTION 30.** 48.977 (2) (a) of the statutes is amended to read:

23 **48.977 (2) (a)** That the child has been adjudged to be in need of protection or
24 services under s. 48.13 (1), (2), (3), (3m), (4), (5), (8), (9), (10), (10m), (11), or (11m) or
25 938.13 (4) and been placed, or continued in a placement, outside of his or her home

BILL

1 pursuant to one or more court orders under s. 48.345, 48.357, 48.363, 48.365,
2 938.345, 938.357, 938.363, or 938.365 for a cumulative total period of one year or
3 longer or that the child has been so adjudged and placement of the child in the home
4 of a guardian under this section has been recommended under s. 48.33 (1) or 938.33

5 ~~(1), or requested under s. 48.357 (1) or (2m) or 938.357 (1) or (2m)~~

6 **SECTION 31.** 48.977 (2) (b) of the statutes is amended to read:

7 48.977 (2) (b) That the person nominated as the guardian of the child is a
8 relative of the child person with whom the child has been placed or in whose home
9 placement of the child is recommended ~~or requested~~ under par. (a) and that it is likely
10 that the child will continue to be placed with that relative person for an extended
11 period of time or until the child attains the age of 18 years.

12 **SECTION 32.** 48.977 (2) (c) of the statutes is amended to read:

13 48.977 (2) (c) That, if appointed, it is likely that the relative person would be
14 willing and able to serve as the child's guardian for an extended period of time or until
15 the child attains the age of 18 years.

16 **SECTION 33.** 48.977 (2) (f) of the statutes is amended to read:

17 48.977 (2) (f) That the agency primarily responsible for providing services to
18 the child under a court order has made reasonable efforts to make it possible for the
19 child to return to his or her home, while assuring that the child's health and safety
20 are the paramount concerns, but that reunification of the child with the child's
21 parent or parents is unlikely or contrary to the best interests of the child and that
22 further reunification efforts are unlikely to be made or are contrary to the best
23 interests of the child or that the agency primarily responsible for providing services
24 to the child under a court order has made reasonable efforts to prevent the removal
25 of the child from his or her home, while assuring the child's health and safety, but that

BILL

Subject to SO 49062 (5)(b) if a county department or in a county having a population of 500,000 or more

1 continued placement of the child in the home would be contrary to the welfare of the
2 child, except that the court is not required to find that the agency has made those
3 reasonable efforts with respect to a parent of the child if any of the circumstances
4 specified in s. 48.355 (2d) (b) 1. to 5. applies to that parent. The court shall make the
5 findings specified in this paragraph on a case-by-case basis based on circumstances
6 specific to the child and shall document or reference the specific information on
7 which those findings are based in the guardianship order. A guardianship order that
8 merely references this paragraph without documenting or referencing that specific
9 information in the order or an amended guardianship order that retroactively
10 corrects an earlier guardianship order that does not comply with this paragraph is
11 not sufficient to comply with this paragraph.

under SO 49062 (5)(a) 20

SECTION 34. 48.977 (3r) of the statutes is created to read:

county department

48.977 (3r) SUBSIDIZED GUARDIANSHIP. If the department has determined that

~~appointing a guardian for a child~~
~~providing monthly subsidized guardianship payments to the guardian of a child who~~
~~and providing monthly subsidized guardianship payments to the guardian are~~
does not meet the conditions specified under s. 48.62 (5) (a) 1. in the best interests

of the child, the petitioner under sub. (4) (a) shall include in the petition under sub.
(4) (b) a statement of that determination and a request for the court to include in the
court's findings under sub. (4) (d) a finding confirming that determination. If the
court confirms that determination and appoints a guardian for the child under sub.

~~(2) and if the guardian was licensed as the child's foster parent or treatment foster
parent before the guardianship appointment and is a resident of a county having a
population of 500,000 or more,~~ the ~~county department~~ shall provide monthly subsidized

guardianship payments to the guardian under s. 48.62 (5)

SECTION 35. 48.977 (4) (a) 4. of the statutes is amended to read:

BILL

1 48.977 (4) (a) 4. The relative person with whom the child is placed or in whose
2 home placement of the child is recommended ~~or requested~~² as described in sub. (2) (a),
3 if the relative person is nominated as the guardian of the child in the petition.

4 SECTION 36. 48.977 (4) (a) 6. of the statutes is amended to read:

5 48.977 (4) (a) 6. A county department under s. 46.22 or 46.23 or, if the child has
6 been placed pursuant to an order under ch. 938 or the child's placement with the
7 guardian is recommended ~~or requested~~ under ch. 938, a county department under
8 s. 46.215, 46.22, or 46.23.

9 SECTION 37. 48.977 (4) (b) 3. of the statutes is amended to read:

10 48.977 (4) (b) 3. The date the child was adjudged in need of protection or
11 services under s. 48.13 (1), (2), (3), (3m), (4), (5), (8), (9), (10), (10m), (11), or (11m) or
12 938.13 (4) and the dates that the child has been placed, or continued in a placement,
13 outside of his or her home pursuant to one or more court orders under s. 48.345,
14 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365 or, if the child has been
15 so adjudged, but not so placed, the date of the report under s. 48.33 (1) or 938.33 (1)
16 or the request for a change in placement under s. 48.357 (1) or (2m) or 938.357 (1)
17 or (2m) in which placement of the child in the home of the person is recommended
18 or requested.

19 SECTION 38. 48.977 (4) (c) 1. g. of the statutes is amended to read:

20 48.977 (4) (c) 1. g. The relative person with whom the child is placed or in whose
21 home placement of the child is recommended ~~or requested~~² as described in sub. (2) (a),
22 if the relative person is nominated as the guardian of the child in the petition.

23 SECTION 39. 48.977 (4) (e) of the statutes is amended to read:

24 48.977 (4) (e) *Court report.* The For a child who has been placed, or continued
25 in a placement, outside of his or her home for 6 months or longer, the court shall order

BILL

1 the person or agency primarily responsible for providing services to the child under
2 a court order to file with the court a report containing the written summary under
3 s. 48.38 (5) (e) and as much information relating to the appointment of a guardian
4 as is reasonably ascertainable. For a child who has been placed, or continued in a
5 placement, outside of his or her home for less than 6 months, the court shall order
6 the person or agency primarily responsible for providing services to the child under
7 a court order to file with the court the report submitted under s. 48.33 (1) or 938.33
8 (1), the permanency plan prepared under s. 48.38 or 938.38, if one has been prepared,
9 and as much information relating to the appointment of a guardian as is reasonably
10 ascertainable. The agency shall file the report at least 48 hours before the date of
11 the dispositional hearing under par. (fm).

12 **SECTION 40.** 48.977 (4) (g) 1. of the statutes is amended to read:

13 48.977 (4) (g) 1. Whether the relative person would be a suitable guardian of
14 the child.


15 **SECTION 41.** 48.977 (4) (g) 2. of the statutes is amended to read:

16 48.977 (4) (g) 2. The willingness and ability of the relative person to serve as
17 the child's guardian for an extended period of time or until the child attains the age
18 of 18 years.

19 **SECTION 42.** 48.977 (4) (h) 1. of the statutes is amended to read:

20 48.977 (4) (h) 1. A disposition dismissing the petition if the court determines
21 that appointment of the relative person as the child's guardian is not in the best
22 interests of the child.

23 **SECTION 43.** 48.977 (4) (h) 2. of the statutes is amended to read:

24 48.977 (4) (h) 2. A disposition ordering that the relative person with whom the
25 child has been placed or in whose home placement of the child is recommended 

BILL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Insert
18-3

Insert
18-3

~~requested~~ as described in sub. (2) (a) be appointed as the child's guardian under sub. (5) (a) or limited guardian under sub. (5) (b), if the court determines that such an appointment is in the best interests of the child.

SECTION 44. 49.155 (1m) (bm) of the statutes is amended to read:

49.155 (1m) (bm) If the individual is providing care for a child under a court order and is receiving payments on behalf of the child under s. 48.57 (3m) or (3n) or 48.62 (5), or if the individual is a foster parent or treatment foster parent, and child care is needed for that child, the individual meets the requirement under s. 49.145 (2) (c).

SECTION 45. 49.46 (1) (a) 5. of the statutes is amended to read:

49.46 (1) (a) 5. Any child in an adoption assistance, foster care, kinship care, long-term kinship care or, treatment foster care, or subsidized guardianship placement under ch. 48 or 938, as determined by the department.

SECTION 46. 767.078 (1) (a) 2. of the statutes is amended to read:

767.078 (1) (a) 2. The child's right to support is assigned to the state under s. 46.261, 48.57 (3m) (b) 2. or (3n) (b) 2., or 49.19 (4) (h) 1. b.

SECTION 47. 767.29 (1m) (c) of the statutes is amended to read:

767.29 (1m) (c) The party entitled to the support or maintenance money or a minor child of the party has applied for or is receiving ~~aid to families with dependent children aid~~ under s. 46.261 or public assistance under ch. 49 and there is an assignment to the state under s. 46.261 or 49.19 (4) (h) 1. b. of the party's right to the support or maintenance money.

SECTION 48. 767.29 (2) of the statutes is amended to read:

767.29 (2) If any party entitled to maintenance payments or support money, or both, is receiving public assistance under ch. 49, the party may assign the party's

BILL

1 right thereto to the county department under s. 46.215, 46.22, or 46.23 granting such
2 assistance. Such assignment shall be approved by order of the court granting the
3 maintenance payments or support money, and may be terminated in like manner;
4 except that it shall not be terminated in cases where there is any delinquency in the
5 amount of maintenance payments and support money previously ordered or
6 adjudged to be paid to the assignee without the written consent of the assignee or
7 upon notice to the assignee and hearing. When an assignment of maintenance
8 payments or support money, or both, has been approved by the order, the assignee
9 shall be deemed a real party in interest within s. 803.01 but solely for the purpose
10 of securing payment of unpaid maintenance payments or support money adjudged
11 or ordered to be paid, by participating in proceedings to secure the payment thereof.
12 Notwithstanding assignment under this subsection, and without further order of the
13 court, the department or its designee, upon receiving notice that a party or a minor
14 child of the parties is receiving aid under s. 46.261 or public assistance under ch. 49
15 or that a kinship care relative or long-term kinship care relative of the minor child
16 is receiving kinship care payments or long-term kinship care payments for the minor
17 child, shall forward all support assigned under s. 46.261, 48.57 (3m) (b) 2. or (3n) (b)
18 2., 49.19 (4) (h) 1., or 49.45 (19) to the assignee under s. 46.261, 48.57 (3m) (b) 2. or
19 (3n) (b) 2., 49.19 (4) (h) 1., or 49.45 (19).

20 **SECTION 49.** 767.29 (4) of the statutes is amended to read:

21 767.29 (4) If an order or judgment providing for the support of one or more
22 children not receiving aid under s. 46.261, 48.57 (3m) or (3n), or 49.19 includes
23 support for a minor who is the beneficiary of aid under s. 46.261, 48.57 (3m) or (3n),
24 or 49.19, any support payment made under the order or judgment is assigned to the
25 state under s. 46.261, 48.57 (3m) (b) 2. or (3n) (b) 2., or 49.19 (4) (h) 1. b. in the amount

BILL

1 that is the proportionate share of the minor receiving aid under s. 46.261, 48.57 (3m)
2 or (3n), or 49.19, except as otherwise ordered by the court on the motion of a party.

3 **SECTION 50.** 938.33 (4) (intro.) of the statutes is amended to read:

4 938.33 (4) OTHER OUT-OF-HOME PLACEMENTS. (intro.) A report recommending
5 placement in a foster home, treatment foster home, group home, or nonsecured
6 residential care center for children and youth ~~or~~, in the home of a relative other than
7 a parent, or in the home of the juvenile's guardian under s. 48.977 (2) shall be in
8 writing, except that the report may be presented orally at the dispositional hearing
9 if all parties consent. A report that is presented orally shall be transcribed and made
10 a part of the court record. The report shall include all of the following:

11 **SECTION 51.** 938.345 (4) of the statutes is created to read:

12 938.345 (4) If the court finds that a juvenile is in need of protection or services
13 under s. 938.13 (4), the court, instead of or in addition to any other disposition
14 imposed under sub. (1), may place the juvenile in the home of the juvenile's guardian
15 under s. 48.977 (2).

16 **SECTION 52.** 938.57 (1) (c) of the statutes is amended to read:

17 938.57 (1) (c) Provide appropriate protection and services for juveniles in its
18 care, including providing services for juveniles and their families in their own homes,
19 placing the juveniles in licensed foster homes, licensed treatment foster homes, or
20 licensed group homes in this state or another state within a reasonable proximity to
21 the agency with legal custody, placing the juveniles in the homes of the juveniles'
22 guardians under s. 48.977 (2), or contracting for services for them by licensed child
23 welfare agencies or replacing them in secured correctional facilities, secured child
24 caring institutions, or secured group homes in accordance with rules promulgated
25 under ch. 227, except that the county department may not purchase the educational

BILL

1 component of private day treatment programs unless the county department, the
2 school board, as defined in s. 115.001 (7), and the state superintendent of public
3 instruction all determine that an appropriate public education program is not
4 available. Disputes between the county department and the school district shall be
5 resolved by the state superintendent of public instruction.

6 **SECTION 53.** 938.57 (3) (a) 4. of the statutes is amended to read:

7 938.57 (3) (a) 4. Is living in a foster home, treatment foster home, group home,
8 or residential care center for children and youth or in the home of a subsidized
9 guardian under s. 48.62 (5).

10 **SECTION 54. Nonstatutory provisions.**

11 (1) **RELATIVE GUARDIANSHIPS.** Notwithstanding section 48.977 (2) (a), 2001
12 stats., a petition under section 48.977 (4) of the statutes, as affected by this act, may
13 be filed for the appointment of a relative as the guardian of the person of a child who
14 has been placed, or continued in a placement, outside of his or her home for less than
15 one year on the effective date of this subsection.

16 (END)

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3005/2ins
GMM.....

(INSERT 8-21)

SECTION ~~h~~[#] 48.356 (1)[✓] of the statutes is amended to read:

48.356 (1) Whenever the court orders a child to be placed outside his or her home, orders an expectant mother of an unborn child to be placed outside of her home, or denies a parent visitation because the child or unborn child has been adjudged to be in need of protection or services under s. 48.345, 48.347, 48.357, 48.363, or 48.365 or whenever the court appoints a guardian for a child under s. 48.977 (2)[↓], the court shall orally inform the parent or parents who appear in court or the expectant mother who appears in court of any grounds for termination of parental rights under s. 48.415 ~~which~~ that may be applicable and of the conditions necessary for the child or expectant mother to be returned to the home or for the parent to be granted visitation.

History: 1979 c. 330; 1983 a. 399; 1989 a. 86; 1991 a. 39; 1995 a. 275; 1997 a. 292.

(END OF INSERT)

(INSERT 13-13)

AP

If the waiver is approved for a county having a population of 500,000 or more, the department shall provide the monthly payments under par. (a)[✓] from the appropriations under s. 20.435 (3) (cx)[↓], (gx)[↓], (kw)[↓], and (mx)[↓]. If the waiver is approved for any other county, the department shall determine which counties are authorized to provide monthly payments under par. (a)[↓], and the county departments of those counties shall provide those payments from moneys received under s. 46.495 (1) (d)[✓].

(c) The amount of a monthly payment under par. (a)[✓] for the care of a child shall equal the amount received under sub. (4)[↓] by the guardian of the child for the month immediately preceding the month in which the guardianship order was granted. A

guardian who receives a monthly payment under par. (a) is not eligible to receive a payment under sub. (4) or s. 48.57 (3m) or (3n).

(END OF INSERT)

(INSERT 18-3)

~~#~~ SECTION ~~B~~ 49.155 (1m) (a) 1m. b. of the statutes is amended to read:

49.155 (1m) (a) 1m. b. The individual has not yet attained the age of 18 years and the individual resides with his or her custodial parent or with a kinship care relative under s. 48.57 (3m) or with a long-term kinship care relative under s. 48.57 (3n) or is in a foster home or treatment foster home licensed under s. 48.62, a subsidized guardianship home under s. 48.62 (5), a group home, or an independent living arrangement supervised by an adult.

History: 1995 a. 289; 1997 a. 27, s. 1766 to 1775, 1838 to 1857; 1997 a. 41, 105, 237, 252; 1999 a. 9; 2001 a. 16; 2003 a. 33.

(END OF INSERT)

(INSERT 18-3)

~~#~~ SECTION ~~B~~ 49.155 (1m) (c) 1g. of the statutes is amended to read:

49.155 (1m) (c) 1g. If the individual is a foster parent of the child or a subsidized guardian of the child under s. 48.62 (5), the child's biological or adoptive family has a gross income that is at or below 200% of the poverty line. In calculating the gross income of the child's biological or adoptive family, the Wisconsin works agency shall include income described under s. 49.145 (3) (b) 1. and 3.

History: 1995 a. 289; 1997 a. 27, s. 1766 to 1775, 1838 to 1857; 1997 a. 41, 105, 237, 252; 1999 a. 9; 2001 a. 16; 2003 a. 33.

(END OF INSERT)

(INSERT A-1)

108

In addition, the bill permits the parental rights of a parent of a child in need of protection or services for whom a guardian has been appointed to be terminated on

the grounds of abandonment if, when the juvenile court appointed the guardian, the juvenile court provided the parent with notice of any ground for termination of parental rights that may be applicable and of the conditions necessary for the child to be returned home and the parent has failed to visit or communicate with the child for a period of three months or longer.

(END OF INSERT)

(M)

(INSERT A-2)

~~has entered into a subsidized guardianship agreement with the county department or DHFS if the child has been placed outside the home for a cumulative total period of one year or longer.~~

Wendy's insert A-2M
CL

(END OF INSERT)

(INSERT A-3)

Under the bill, the amount of a monthly subsidized guardianship payment is equal to the amount of the monthly foster care or treatment foster care payment received by the guardian immediately before the guardianship order was granted. In addition, a subsidized guardian is eligible for a child care subsidy under the Wisconsin Works Program in the same manner as a foster parent is so eligible and a child who is in the care of a subsidized guardian is eligible for Medical Assistance in the same manner as a child in foster care is so eligible.

(END OF INSERT)

(INSERT A-4)

No ff

and who has entered into a subsidized guardianship agreement. If the waiver is approved for Milwaukee County, the bill requires DHFS to provide the monthly subsidized guardianship payments. If the waiver is approved for any other county, the bill requires DHFS to determine which counties are authorized to provide subsidized guardianship payments and requires those authorized counties to provide those payments.

STET

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3005/2ins
GMM:wlj:rs

INSERT
A-2M

(No ff)

This bill permits a county department of human services or social services (county department) or, in Milwaukee County, the Department of Health and Family Services (DHFS) to provide monthly subsidized guardianship payments to a person who is appointed as the guardian for a child in need of protection of services; was the licensed foster parent or treatment foster parent of the child before that appointment; and has entered into a subsidized guardianship agreement with the county department or DHFS. A county department or DHFS may provide the monthly subsidized guardianship payments to the person if the child has been placed outside the home for a cumulative total period of one year or longer; the juvenile court has found that reunification of the child with the child's parents is unlikely or contrary to the best interests of the child and that further reunification efforts are unlikely to be made or are contrary to the best interests of the child; and the juvenile court has found that appointment of a guardian is in the best interests of the child; or if the child does not meet any of those conditions, but DHFS has determined that appointing a guardian for the child and providing subsidized guardianship payments to the guardian are in the best interests of the child and the juvenile court has confirmed that determination.

Emery, Lynn

From: Seaquist, Sara
Sent: Monday, February 23, 2004 4:31 PM
To: LRB.Legal
Subject: Draft review: LRB 03-3005/2 Topic: Subsidized guardianships

It has been requested by <Seaquist, Sara> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-3005/2 Topic: Subsidized guardianships